



PROTECTIVE DISCRIMINATION IN POST INDEPENDENT INDIA: A CRITICAL ANALYSIS

Satapasuna Gayen¹ | Dr. Chandan Adhikary²

¹ M.Ed. Student, Department of Education, The University of Burdwan, Golapbag, Burdwan-713104, West Bengal, India.

² Assistant Professor, Department of Chemistry, Institute of Education (P.G.) For Women, Chandernagore, Hooghly-712138, West Bengal, India.

ABSTRACT

Indian society is characterized by a high degree of structural diversity based upon the organization of people into different strata like caste and ethnic groups. In this system, people are categorized into social groups of castes and assigned hierarchical and unequal social status and rights which are predetermined by birth. Certain classes of Indian citizens are under severe social and economic disadvantages so that they cannot effectively enjoy either equality of status or of opportunities available in the society. Therefore, the Constitution accords to these weaker sections of society protective discrimination in various articles. Protective discrimination is the policy of granting special privileges to the downtrodden and the underprivileged sections of society. The intention of "Reservation" was to improve the conditions of the backward castes and communities of the society but now the effects of reservation have been severe and damaging the quality of the social life. It is an emerging issue to judge and analyze the impacts of reservation on education. In this investigation it is to explore how far and to what extent we need reservation and the present reservation policy should be revised.

KEYWORDS: Reservation, Protective Discrimination, Constitutional Provisions, caste, underprivileged and weaker sections, creamy layer, Economic Reservation.

INTRODUCTION

"It is against the fundamental principles of humanity, it is against the dictates of reason that a man should, by reason of birth, be denied or given extra privileges"

-Mahatma Gandhi

"Reservation" means "An arrangement by which some provisions are secured in advance" or "The act of keeping back or withholding". Reservation is a process of reserving a certain percentage of seats (vacancies) in government institutions for members of backward and under-represented communities (defined primarily by caste and tribe). Reservation is a form of quota-based affirmative action and is governed by constitutional laws, statutory laws, and local rules and regulations.

Indian society is characterized by a high degree of structural inequality based upon the organization of people into caste and ethnic groups. It was a caste-ridden, stratified hierarchical society, and a particular segment of the society had been denied the bare human rights. Their education, wages, living conditions, social status was dictated by the whims of upper strata of society, reducing them to destitution. The economic backwardness brought social awkwardness which consequently made them downtrodden and thus depriving them even of the dignity of life. In a society compartmentalized on caste basis, upper castes controlled the levers of power enabling them to run their whips, prejudicial to the interests of lower segments of the society. Lower castes had to serve the upper castes without having any say and grievance redressal mechanism. This inhumane and barbaric condition perpetuated for centuries, till "we the people" realized the malady impelling the framers of our constitution to think. Any democratic society faces the challenge of harmonizing two essentially contradictory political concepts—one, equality before the law irrespective of religion, caste, creed, race, and gender, and the other, social justice at the cost of the same commitment for equality before the law. Even a developed democracy like the United States is no exception to the rule and has taken recourse to affirmative action to ensure justice for the less privileged sections of the society at the cost of individual merit and equality of all citizens before the law. In India large numbers of people have experienced social discrimination through centuries on account of its peculiar institution called the caste system, efforts have been made to provide redress for these under-privileged sections, through the policy of reservations or quotas for them in jobs, seats in educational institutions and legislatures, and in governmental aid, loans and other developmental assistance.

In all, four under-privileged categories have either received benefits under the scheme or have been seeking such benefits, namely the Scheduled Castes (SCs) and the Scheduled Tribes (STs), the Other Backward Classes (OBCs), the religious minorities or sections thereof, and lately, the women. This project discusses these categories from a political perspective. Its scope however, is limited to assessing the schemes both under operation as well as under consideration, only at the national level. The experiences of different states have been referred to only occasionally to provide an example or to make a particular point.

Protective Discrimination

The spirit of equality pervades the provisions of the Constitution of India, as the

main aim of the founders of the Constitution was to create an egalitarian society wherein social, economic and political justice prevailed and equality of status and opportunity are made available to all. However, owing to historical and traditional reasons, certain classes of Indian citizens are under severe social and economic disabilities so that they cannot effectively enjoy either equality of status or of opportunity. Therefore the Constitution accords to these weaker sections of society protective discrimination in various articles. Protective discrimination is the policy of granting special privileges to the downtrodden and the underprivileged sections of society, most commonly women. These are affirmative action programs, most visible in both the United States and India, where there has been a history of racial and caste discrimination. The practice is most prominent in India, where it has been enshrined in the constitution and institutionalized. The need to discriminate positively in favour of the socially underprivileged was felt for the first time during the nationalist movement. It was Mahatma Gandhi, himself a devout Hindu and a staunch believer in the caste system, who was the first leader to realize the importance of the subject and to invoke the conscience of the upper castes to this age-old social malady of relegating whole communities to the degrading position of "untouchables". He also understood the political logic of inducting this large body of people into the political mainstream in order to make the freedom movement more broad based. By renaming these untouchables as "Harijans" (people of God) he tried to give this policy a religious sanction so as not to disturb the traditional sensitivities of the caste Hindus more than was really necessary. The Constitution of independent India which largely followed the pattern of the Government of India Act, 1935, made provisions for positive discrimination in favour of the Scheduled Castes and Scheduled Tribes (SCs & STs) which constituted about 23% of the divided India's population. Besides reserving parliamentary seats for them they were given advantages in terms of admission to schools and colleges, jobs in the public sector, various pecuniary benefits for their overall development, and so on. The constitution indeed guaranteed the fundamental right of equality of all citizens before the law but it also categorically lay down that nothing in the constitution "shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes".

Constitutional Provisions regarding Protective Discrimination

- Article 15(4) and 16(4) of the Constitution enabled both the state and Central Governments to reserve seats in public services for the members of the SC and ST, thereby, enshrining impartiality of opportunity in matters of civic service.
- Article 15(4) states that: Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.
- Article 16(4) states that: Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

- Article 16(4A) states that: Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State. (Constitutional 77th Amendment, - Act, 1995).
- Article 16(4B) states that: Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty percent reservation on total number of vacancies of that year. (Constitutional 81st Amendment, - Act, 2000).
- Article 46, a 'Directive Principle of State Policy' states that: The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.
- Article 29(2) states that: protection for admission and against discrimination in any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.
- Article 335 states that: The claims of the members of the Scheduled Castes and Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments of services and posts in connection with the affairs of the Union or of a State.
- The Constitution prohibits discrimination (Article 15) of any citizen on grounds of religion, race, caste, etc.; untouchability (Article 17); and forced labour (Article 23). It provides for specific representation through reservation of seats for the SCs and the STs in the Parliament (Article 330) and in the State Legislative Assemblies (Article 332), as well as, in Government and public sector jobs, in both the federal and state Governments (Articles 16(4), 330(4) and 335).

Reservation Policy in Post-independent India

In 1982, the Constitution specified 15% and 7.5% of vacancies in public sector and government-aided educational institutes as a quota reserved for the SC and ST candidates respectively for a period of five years, after which the quota system would be reviewed. This period was routinely extended by the succeeding governments. The Supreme Court of India ruled that reservations cannot exceed 50% (which it judged would violate equal access guaranteed by the Constitution) and put a cap on reservations. However, there are states laws that exceed this 50% limit and these are under litigation in the Supreme Court. For example, the caste-based reservation stands at 69% and the same is applicable to about 87% of the population in the State of Tamil Nadu. In 1990, Prime Minister V. P. Singh announced that 27% of government positions would be set aside for OBC's in addition to the 22.5% already set aside for the SCs and STs.

Current reservation system in India comprise of 7.5% reservation for people belonging to Schedule Tribe (S.T), 15% reservation for people belonging to Schedule Caste (S.C) and 27% for people belonging to Other Backward Caste. This is to be followed in all central government jobs and educational policies. When it comes to state governments some states provides reservation for female candidate, armed force candidate and freedom fighters.

Critical analysis on Impacts of Reservation Policies

The intention of reservation was to improve the conditions of the backward castes and communities of the society but the effects of reservation have been severe and damaging. The day a child starts his education by enrolling himself in a school, without choice he has become a part of the vicious circle of reservation. And this quota system doesn't end here; it stays with us till our last breaths. Some harmful effects of reservation policies are depicted below.

- Reservation insults peoples' ability and intellect directly as it readily allows the authority to sack really deserving candidates in the name of cast.
- Reservation always allows people with lesser marks and lesser quality to get admissions in higher educational institutions and jobs which are totally unfair and unhealthy in true sense as in all the cases the reserved categories are permitted to enjoy higher education and job by lowering criteria and standard.
- Reservation never helps the needy one but at the same time it creates another privileged section, which suppresses their own community. The idea of helping the needy one is hampered because it creates a creamy layer.
- Reservation is a greatest trump card of politicians who secure their vote bank through the process of reservation because it creates a great hallow about social justice and development of Dalits (tribal people) and backward com-

munities.

- Reservations paves the way of misuses of taxpayers' valuable money as it produces people with lower standards in all the fields because the govt. run educational institutions are highly subsidized by peoples' money and that produces negative results by positive money.
- Reservation recognizes the caste system in a sophisticated way in the name of social justice and constitution and its inevitable impact is division of society in the name of caste and community specially creating privileged and unprivileged section in higher education and job.
- Reservation policy adopted by the govt. tends to simplify the real condition of upper castes by terming them as privileged. It never solves the problem of upper castes' poor and it is not ready to accept the fact there are also backwardness in upper class.
- Reservation is surely one of the greatest causes for which our country is lagging behind. A country cannot prosper with under qualified students and professionals produced by public money. Where quality and merit is denied then how we can become progressive and compete with other countries as it creates a large imbalance in the way of progress.
- Reservation in higher education does harm to the quality of education as well as the quality of higher educational institution. When we admit students with lower qualities in higher education then the quality of education can't be maintained and the institutes of excellence like IIT, IIM, JNU, AIIM and other reputed govt. and private institutions.
- Reservation in jobs produces harmful effects in work places where some will get privilege in case of promotions and other matters and at the same time someone will be denied in the term of castes creating another inequality and unfairness in spite of having suitable qualifications.
- Reservation is like a death sentence to the qualified candidates. the people who is efficient, meritorious, really qualified but not getting chance in higher educational institutions and jobs his or her future is definitely in danger, he or she has no fault but for being from upper caste he or she is denied. It is pathetic, ruthless.
- Reservations dishonor the right of meritorious peoples to get admission or job in spite of having good intellect and high proficiency. Reservation hurts the basics and principles of fair selection.
- Reservation is a new age corruption having the stamp of the govt. and the political parties as this process is supported by them. It creates a legal backdoor to get admissions and jobs without fair competition and allowing the less qualified to get advantage when the more qualified, more deserving are not considered as eligible.
- Reservation is a feudalistic process of rights as it can be enjoyed throughout the life and generations in the name of castes. The peoples who are seemed to be upgraded they use it in every case again and again and also use it for their future generations in spite of being solvent and wealthy like a rule of dynasty.
- Reservation in higher education is more dangerous than the admission of a candidate through donation or management quota as in this case the institutions get monetary benefit to develop their infrastructures in spite of admitting lower standard candidates, but in case of reservation it is the case of total loss as you are offering seats and monetary benefits with large amount of subsidiary to the lower quality candidates who actually does not deserve.
- People don't wish to work and study as they want to avail benefits of their caste. And hence, they can never develop and prosper leaving the backward classes where there were without any improvement. People also get fake certificates made to enjoy the benefits of reservation.
- Students who put in the best of their efforts to make it in the merit are disheartened if they fail to get an admission in a good college due to a reservation. They get discouraged and depressed and such situations lead to frustration and suicidal attempts.
- Reservation system can't be adopted by increasing seats as the govt. is unable to provide suitable infrastructures, qualified faculties, strength of teachers and healthy teacher student ratio due to many reasons and also there is no new policies still now adopted by the govt.
- When good students don't find admissions in good colleges and good jobs due to reserve seats, they prefer relocating themselves to other countries with better opportunities to perform and make a better living totally based on their performance levels. This has forced many fertile brains to leave the country and settle abroad.

20. Every country banks upon its youth population to take it to new height of importance and to back it, a country needs to provide everyone with best education. Failing to do so has resulted and is resulting in a Phenomenon known as Brain Drain which is a great loss to not only to the pride of that country but it accounts to economic loss as well.

CONCLUSION

The debate over reservation policy in India is acrimonious and is increasingly finding expression in violence. But a democracy which is essentially a social contraption is neither dictated by logic nor by ethics. At the root of democratic success is social engineering which is affected through political bargaining. In India the process is on and only the future would tell whether its experiments were in the right direction or not.

The reservation policy was only for 10 years after the independence, for upliftment of SC and ST but till now it is to continue and no one has taken any step to amend it or revise it or to change it. It emphasizes caste or tribe rather than income or wealth. The goal of reservation in India has been to bring about an improvement in the welfare who, historically, has been economically and socially depressed. But, in arriving at this judgment about who should be eligible for reservation, the criterion has been a persons' caste rather than his income or wealth. Consequently, groups belonging to what Article 115 of the Indian Constitution calls "socially and educationally backward classes" have been benefited from reservation even though, in practice, many of these groups could not be regarded as "backward". This has meant that many of the benefits of reservation have been captured by well-off groups from the depressed classes (for example, chamars from the SC) while poorer groups from the depressed (for example, bhangis from the SC) have failed to benefit.

Now we Indians cannot change this without revolt and today revolt is not possible and not good for India so better is Indians should learn to ask the political parties as well as tell them we want reservation in everywhere only based on the collective salary of family not caste or religion. Whatever may be the caste or religion, he is Indian first and if he is Indian first and poor and needy he should be given Reservation Benefits. This way only real and need based people of India will get the benefits of reservation otherwise the creamy layer people of India will continue to enjoy all the benefits and we will keep fighting on issue like we need reservation or not. Let's accept the fact that we need reservation and we have to see that Reservation reaches to poor and needy families. For political gains and votes political parties will keep the Ghost of Reservation alive forever, so it is better we Indians keep an eye and see that the reservation benefits are going to real and needy persons of India based on the economic status of family not the rich class of Indians who became rich using reservation. Always we should support and demand economic reservation in every field.

REFERENCES

1. Jangir S.K. 2013. "Reservation Policy and Indian Constitution in India". Accessed on 3/01/2017. <http://iasir.net/AJRHASSpapers/AJRHASS13-225.pdf>
2. Thorat S, Senapati C. 2007. "Reservation in Employment, Education and Legislature - Status and Emerging Issues". Accessed on 4/01/2017. <http://www.dalitstudies.org.in/download/wp/0705.pdf>
3. Lawyers Law, Latest Law News in Delhi, Legal News & Articles India 2015. "Current Scenario of Reservation in India.. Advantages & Disadvantages". Accessed on 9/01/2017 http://latest-law_news.blogspot.in/2015/09/reservation-in-india-is-against.html.
4. TARGETSTUDY 2011. "Impact of reservation on the quality of education". Accessed on 12/01/2017. <https://targetstudy.com/articles/impact-of-reservation-on-the-quality-of-education.html>.
5. Moon microsystem 2013. "Impact of Reservation on Education System". Accessed on 12/01/2017. <https://moonmicrosystem1.wordpress.com/tag/effect-of-reservation-on-education/>
6. From Politics To Fashion 2010. "Reservation in India – A brief history". Accessed on 12/01/2017. <http://www.realityviews.in/2010/03/reservation-in-india-brief-history.html>
7. Sulekha.com 2014. "Arguments against reservation". Accessed on 15/01/2017. http://education.sulekha.com/arguments-against-reservation_90578_blog.
8. KNOWLEDGE OF INDIA 2016. "Quota or Reservation System in India: History & Present". Accessed on 15/01/2017. <http://knowledgeofindia.com/quota-or-reservation-system-in-india/>